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Supreme Court, U.S.
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Supreme Court of the United States

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October Term, 1997

JOHN R. CONNOR,

Petitioner,

-v.-

BERNICE FLYNN, EXECUTRIX,
ESTATE OF EDWARD J. FLYNN,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF NEW JERSEY

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether, as a matter of law, the orders of the New Jersey Supreme Court entered in this case must be signed by a justice of that court in order to sustain review by the United States Supreme Court?

2. Whether the decisions of the New Jersey courts denying petiitoner's motions for substitution as "individual" plaintiff in *Connor v. Flynn*, C-2565-68, are in conflict with the U.S. Supeme Court's decision in *Ex parte Slater*, 246 U.S. 128 (1918) and thereby violate Petitioner's due process rights under the Fourteenth Amendment to the United States Constitution?

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

In the matter of

JOHN R. CONNOR,

Petitioner,

v.

BERNICE FLYNN, EXECUTRIX
ESTATE OF EDWARD J. FLYNN,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF NEW JERSEY

PETITION FOR WRIT OF CERTIORARI

Petitioner John R. Connor hereby petitions the United States Supreme Court for a writ of certiorari to review the Final Order of the New Jersey Supreme Court denying certification in this case, entered on October 7, 1997, and its Order, entered January 28, 1998, which granted reconsideration but denied certification a second time.

JURISDICTION

On October 7, 1997, the New Jersey Supreme Court entered an order denying the petition for certification in this matter.

(Appendix A, p. 1a). Petitioner subsequently filed a motion for extension of time within which to file for reconsideration, and a motion for reconsideration. The extension was granted on January 14, 1998 (Appendix O, p. 25a). On January 28, 1998, the New Jersey Supreme Court granted reconsideration and then denied certification a second time. (Appendix P, p. 26a). Not one of the three orders is signed by a justice, as required by *R.* 2:13-1(a). On April 21, 1998, petitioner served and filed a motion to have the orders signed by the respective justices of the New Jersey Supreme Court *nunc pro tunc*.

The jurisdiction of the United States Supreme Court is invoked under 28 *U.S.C.* 1257(a).

The sole opinion entered in this matter is that of the Appellate Division of the Superior Court of New Jersey, filed May 9, 1997, which is attached herewith. (Appendix B, pp. 2-3a). The opinion is unpublished.

CONSTITUTIONAL PROVISIONS AND COURT RULES INVOLVED

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> No state * * * shall deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

N.J. Sup. Ct. *C.P.R.* 2:13-1(a) provides in pertinent part:

> **Supreme Court.** The Chief Justice or, pursuant to R. 1:33-1, the Acting Chief Justice, shall preside over sessions and conferences of the court and shall sign all orders and other papers on behalf of the court. If the Chief Justice is absent or

unable to serve, the senior justice shall serve temporarily as presiding justice.

N.J. Sup. Ct. *C.P.R.* 2:13-1(b) provides in pertinent part:

Appellate Division. The presiding judge of each part, designated by the Chief Justice shall preside over its sessions and conferences and shall sign all orders and other papers on behalf of the part.

N.J. Sup. Ct.. *C.P.R.* 4:34-1(b) provides in pertinent part:

If a party dies and the claim is not thereby extinguished, the court shall on motion order substitution of the proper parties. The motion for substitution may be made by the successors or representatives of the deceased party or by any party ...

N.J. Sup. Ct. *C.P.R.* 4:50-1(f) provides in pertinent part:

On motion, with briefs, and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment or order for the following reasons: * * * (f) any other reason justifying relief from the operation of the judgment or order.

STATEMENT OF THE CASE

The complaint in this suit, in equity, for an accounting between partners in a tavern business, was filed by deceased plaintiff Mary A. Connor on May 22, 1969 in the Superior Court of New Jersey, Chancery Division, Essex County, and was docketed as *Mary A. Connor, Individually and as Executrix of the Estate of Mary Ellen Flynn v. Edward J. Flynn*, Docket No. C-2565-68. (Hereafter referred to as *Connor v. Flynn*, C-2565-68). A related complaint for the partition of partnership assets (land, building and liquor license) was filed by defendant

Edward J. Flynn (plaintiff's brother) and docketed as *Flynn v. Connor*, Docket No. C-3138-68, with both cases being consolidated for trial. The latter suit was decided on the basis of an uncontested motion for summary judgment on February 25, 1972, with the business assets being purchased by the defendant at a sheriff's sale for $90,000.00.[1] The monies were ordered deposited in a trust fund maintained by the Clerk of the Superior Court to await the outcome of the accounting suit, *Connor v. Flynn*, C-2565-68.

The accounting suit was tried on 10 trial days in March and April of 1972 and resulted in a final judgment, entered 3 years later on March 7, 1975, which awarded plaintiff the sum of $6,408.80 in adjustments to income, but denied her principal claim for concealed profits in excess of $100,000.00. Plaintiff appealed the decision to the Appellate Division of the Superior Court of New Jersey. *Connor v. Flynn*, Docket No. A-2853-74. During the pendency of the appeal, plaintiff returned the suit to the trial court in order to secure 3 days of missing trial transcript, including the testimony of defendant's expert accounting witness. On November 4, 1977, the trial court ordered the production of missing transcript and specifically provided that plaintiff's motion to settle the record was continued, pending receipt of transcript. The November 4,1977 order was the *last*

---

[1] Subtracting sheriff's fees, the actual amount deposited in the trust fund came to $87,412.20, of which plaintiff owned one-third (1/3) and defendant two-thirds (2/3), representing their respective partnership shares. According to an accounting filed on October 14, 1997 with the Essex County Surrogate by Administrator C.T.A. Lucas E. Phillips, the total monies belonging to Mary A. Connor eventually totalled $58,428.00, constituting decedent's 1/3 share of the original deposit, or $29,137,40, plus $6,408.80 from the judgment in C-2565-68 (which was bequeathed to petitioner), with the remainder comprising interest accrued since 1972.

order entered in *Connor v. Flynn* before plaintiff's untimely death on November 24, 1977.

Petitioner (decedent's son) was named as executor in his mother's will (Appendix G, p.11a), however he was not allowed to serve in the office at the request of certain attorneys who were asserting liens against the trust fund. A provision to that effect was included in the December 3, 1979 judgment admitting the will to probate. Instead, the court appointed an Administrator, C.T.A. (Lucas E. Phillips, Jr.), who succeeded a previously-appointed general administrator (George Warren, Esq.). In decedent's will, however, petitioner was specifically bequeathed his mother's "right, title and interest, including the [$6,408.80] proceeds, of the judgment in a pending lawsuit entitled *Connor v. Flynn*, Docket A-2853-74, in the Superior Court of New Jersey * * * absolutely and forever." (Appendix G, p. 12a).

Notwithstanding plaintiff's death, and the return of the suit to the trial court, the Appellate Division of the Superior Court, in a *per curiam* opinion, dated September 24, 1979, proceeded to affirm the trial court's judgment in the accounting suit. *No* party, either the Administrator C.T.A., plaintiff's estate, or petitioner had been substituted for Mary A. Connor as plaintiff, or appellant, in the suit. The Appellate Division merely noted that: "[t]here was no appearance on behalf of Mary Connor, *pro se*, who is now deceased." (Appendix H, p. 12a).

Prior to her death, plaintiff, acting *pro se*, had prevailed in an appeal entitled *Connor v. Flynn*, A-898-75, which had reversed an October 23, 1975 decision of the trial court in C-2565-68 which had awarded $28,657.94 in attorneys' fee awards, ruling:

> Plaintiff was entitled to a plenary hearing on the matter counsel fees. *H. & H. Ranch Homes, Inc. v. Smith*, 54 *N.J. Super.* 347 (App. Div. 1959). She was entitled to appear and be heard with regard to the fair

> value of the attorneys' services. *Tuessel v. Cadillac Bar Corp.*, 63 *N.J. Super.* 430 (App. Div. 1960), certif. den. 34 *N.J.* 65 (1961).

(Appendix I, p. 14a). Despite the terms of this decision, and the specific bequest in decedent's will which gave title to *Connor v. Flynn* to petitioner, the trial court denied petitioner's motion to settle the record in C-2565-68 on the ground that "the administrator or executor is the proper party." (Appendix J, p. 16a).

A second hearing on remand of attorneys' liens was held on November 16, 1983 and resulted this time in two orders disbursing $49,998.04 from the trust fund — without any substitution for decedent Mary A. Connor as plaintiff in *Connor v. Flynn*. The trial court refused to recognize petitioner's monetary interest in the suit and would only allow petitioner to participate as a "beneficiary" and not as a "party" to the suit. During the remand hearing on attorneys' liens on November 16, 1983, no cross-examination of the 5 attorney-claimants was conducted by the Administrator C.T.A., and no defenses were offered, despite the fact that decedent had contracts with two of the attorneys. Not a single objection was raised at any time by the Administrator, C.T.A., except by petitioner, who refused to participate in the hearing as a mere "beneficiary."

At the very end of the hearing, the court acceeded to a suggestion from claimant Blackwell that the Administrator C.T.A. be added as a party defendant in substitution of deceased defendant Mary A. Connor. The only action in which decedent had appearded as as defendant was the partition action, *Flynn v. Connor*, C-3138-68, which had terminated in 1972— 11 years previously. Wholly ignored was the Appellate Division's 1977 remand decision, A-898-75, which had ordered a plenary hearing on attorneys' liens in the accounting suit, C-2565-68, the suit in which the legal services were rendered. On appeal, the Appellate Division upheld the orders awarding $49,998.04

in attorneys' fees, specifically finding: "the administrator c.t.a. is a proper party to the proceedings as a representative of the Estate of Mary A. Connor." (Appendix K, p. 17a). The fact remained that *no* actual motion for substitution had ever been filed in *Connor v. Flynn*, C-2565-68, the suit to which the liens attached.

On August 24, 1994, petitioner filed his first motion for substitution as "individual" plaintiff in C-2565-68, which motion was denied by the trial court on September 16, 1994. (Appendix F, p.9a). Petitioner could never succeed in obtaining the complete transcript of the hearing on the first substitution motion, due to a missing tape (Tape #2). While attempting to do so before the trial court, the Appellate Division dismissed the appeal. (Appendix E, p. 7a). Petitioner's subsequent appeal to the New Jersey Supreme Court was dismissed on June 6, 1995 on the "submissions of the parties * * * for failure to state a substantial constitutional question." (Appendix D, p. 6a) The only problem was: the parties hadn't yet filed their submissions, or briefs. In fact, petitioner's merits brief wasn't even due until June 9, 1995 — 3 days after the appeal was dismissed, when it was filed.

Due to the irregular disposition of the two appeals by the Appellate Division of the Superior Court of New Jersey and the New Jersey Supreme Court, Petitioner renewed his substitution motion before the trial court on June 22, 1995 and simultaneously moved to vacate the court's denial of the first substitution motion under *R.* 4:50-1(f). The renewed, second substitution motion was denied by the trial court on August 23, 1995. (Appendix C, pp. 4-5a). That decision was upheld by the Appellate Division on May 9, 1997. (Appendix B, pp. 2-3a). A petition for certification to the New Jersey Supreme Court was denied on October 7, 1997. (Appendix A, p. 1a).

* * * * * *

On September 5, 1997, nearly 3 years after the first (September 16, 1994) hearing on petitioner's first substitution motion, the Superior Court of New Jersey finally produced an Affidavit of Missing Tape for the untranscribed portion of the motion hearing. In the interim, petitioner had engaged in unceasing efforts to secure the missing transcript on which to base his appeals, including 2 separate motions to compel filed in the Appellate Division on April 11, 1996 and August 29, 1996—both of which were denied. The missing "Tape 2" had variously been described by the courts as "unavailable," "lost," "misplaced" and even, in one Appellate Division order as "found." With the Affidavit of Missing Tape in his possession, petitioner moved immediately before the trial court to reconstruct the record. The motion was heard on October 17, 1997, and in its order of October 20, 1997, the trial court stated that the transcript of the September 16, 1994 proceeding is "missing" and accepted petitioner's Statement of Proceedings in Lieu of Transcript "as the events which occurred on September 16, 1994 for which the electronic recording is missing." (Appendix L, p. 19a).

The Statement of Proceedings includes a critical discussion of the U.S. Supreme Court's decision in *Ex parte Slater*, 246 U.S. 128 (1918), which, petitioner argued, supported his position that *Connor v. Flynn*, C-2565-68 was equitably abated, or suspended, on his mother's death and can only be legally revived upon petitioner's substitition as "individual" plaintiff. Following that discussion:

> "The court then inquired, hypothetically, what actions I would take if it were to grant my motion for substitution, to which I replied that the question was "premature."
>
> "The court next inquired whether I would attack Judge Thompson's two orders (of disbursement), to

which question I replied "Yes." The court then denied my first substitution motion."

(Appendix M, pp. 21-22a).

The New Jersey Supreme Court, before which petitioner's certification petition was pending, elected not to await receipt of the reconstructed trial record for the September 16, 1994 hearing, and proceeded, instead, to deny certification on October 6, 1997. (Appendix A, p. 1a). Subsequently, that court granted Petitioner's motion to extend time for filing for reconsideration (Appendix O, p. 25a), and then granted reconsideration but denied certification a second time by its order entered January 28, 1998. (Appendix P, p. 26a).

None of the orders is signed by a justice of the New Jersey Supreme Court, as required by R. 2:13-1(a). However, the absence of a judicial signature stands in marked contrast to an extension order entered in the earlier case of *Connor v. Sachs, et als.*, Docket No. 29,896, filed February 17, 1989, whereon the same Clerk signed *for* the Chief Justice, granting an extension of time to defendants' attorneys in that case to file a brief. (Appendix Q, p. 27a).

REASONS FOR GRANTING THE WRIT

I. The orders of the New Jersey Supreme Court entered in this case must be signed by a justice of that Court in order to sustain review by the U.S. Supreme Court.

The question of whether omission of a judge's signature affects the validity of an order depends on whether a statute or rule of court requires a signature. In some jurisdictions, its omission renders the order absolutely void, while in others, its

absence simply creates a defect that makes the order voidable, but subject to amendment *nunc pro tunc*.

"[T]he cases that hold that a signature is necessary arise, for the most part, in jurisdictions where the statutory requirement in that respect is mandatory." 56 *Am.Jur* 2d *Motions, Rules and Orders* § 37 (1998) at p. 32. New Jersey is a jurisdiction requiring a judicial signature on orders. The requirement is found in *R.* 2:13-1(a) which states that:

> The Chief Justice or * * * the Acting Chief Justice, shall sign all orders and other papers on behalf of the court.

Id. (Emphasis added). *See also: 1 New Jersey Pleading and Practice Forms IX Administration* § 7.141 (1998) at p. 823 ("The Chief Justice or the Acting Chief Justice must preside over sessions and conferences of the court and must sign all orders and other papers on behalf of the court").

Petitioner's research has not disclosed a case precisely on point, nevertheless, in *Steedle v. Woolston*, 88 N.J.L. 91 (1915), the former New Jersey Supreme Court reversed a default judgment entered in the small cause court below, relying, *inter alia,* on the fact that the summons was unsigned:

> "It is true that the name of the justice was printed on the endorsement, but the statute requires that a copy to be left with the defendant, and what he received was a copy of an apparently unsigned, and therefore, unissued, summons. Such a paper had no binding legal force."

Id., at p. 92. In *State v. Lindeman*, 254 N.W. 276 (N.D. 1934), the Supreme Court of North Dakota declined to review, on appeal, a part of the defendant's appeal which was from an oral

order denying a motion for a new trial, albeit the order had been entered in the shorthand notes of the court stenographer. The court held:

> "It is clear that such an important order as that of granting or refusing a new trial should be made part of the written record * * * Unless it is reduced to writing, *signed by the judge*, and filed with the clerk * * * *there is nothing to appeal from.*"

Id., at 277-278. (Emphasis added).

In *Origet v. United States*, 125 U.S. 240 (1888), the United States Supreme Court similarly refused to entertain part of an appeal where a required signature of a district judge on a Bill of Exceptions was abbreviated: "Allowed and ordered on file November 22, '83. A.B." The Court held the initials "A.B." an insufficient authentication of the bill of exceptions under "§ 4 of the act of June 1, 1872, c. 255, (17 Stat. 197,) now § 953 of the Revised Statutes." *Id.*, at 244. Accordingly, the Court held: "the questions purporting to be raised by the paper cannot be considered." *Id.*, at 244. *See also: Kinney v. U.S. Fidelity*, 222 U.S. 283 (1911).

In *Ohl & Co. v. Smith Iron Works*, 288 U.S. 170 (1932), the Court relaxed somewhat the stringent full-signature requirement established in *Origet, supra*, and reviewed a bill of exceptions that had been initialed by the district judge: "Allowed August 20, 1930, J.A.L., D.J." The Court held such an entry was a sufficient authentication of his official act and that:

> "We perceive no reason why petitioner should lose its right to have the rulings upon the trial appropriately reviewed by the appellate court, merely because the District Judge failed to sign his full name."

Id., at p. 177. A required, but missing, signature situation was confronted by the Court in the case of *Idaho & Oregon Land Imp. Co. v. Bradbury,* 132 U.S. 509 (1889), where the clerk below had failed to comply "with the rule of this Court in affixing his signature." *Ohl & Co., supra*, at p. 174. In *Idaho & Oregon Land Imp. Co., supra*, the Court resolved the problem by exercising its discretion to allow the missing signature to be supplied, since it was "too late to take a new appeal or writ of error." *Id.*, at p. 513. The Supreme Court allowed withdrawal of the record "for the purpose of having the certificate of authentication perfected by adding the signature of the clerk." *Id.*, at p. 513. "A defect or inaccuracy in mere matters of form can be corrected notwithstanding the end of the term. *United States v. Mayer,* 235 U.S. 55, 67." *Ohl & Co., supra*, at p. 174.

* * * * * *

In the within case, we are similarly confronted with the circumstance of partially-authenticated orders that have issued from the New Jersey Supreme Court. Although the orders in question contain the ~~si~~gnature of the court clerk, the required judicial signatures are totally missing in the signature blocks on the orders above their printed individual names and offices. Not even initials appear on the documents. *R.* 2:13-1(a), however, mandates a judicial signature on all orders of the state supreme court.

The record, *infra*, demonstrates that orders of the Appellate Division of the Superior Court of New Jersey (the court below the New Jersey Supreme Court) entered in this case, do contain a judicial signature, in accordance with *R.* 2:13-1(b) (Appendix E, pp. 7-8a), while the order entered in *Connor v. Sachs* evidences awareness by the Clerk of the Supreme Court of the *R.* 2:13-1(a) requirement by his act in signing for the late-Chief Justice Robert N. Wilentz. (Appendix Q, p. 27a).

Consequently, petitioner submits that the U.S. Supreme Court, in order to ensure the viability of this petition, should exercise its discretion and, in accordance with its ruling in *Idaho & Oregon Land Imp.Co., supra,* allow the orders to be amended *nunc pro tunc*, on the basis of petitioner's motion for that purpose, presently before the New Jersey Supreme Court, or, failing which, the Supreme Court should issue its mandate to the state court directing correction of the said orders.

II. This application for a writ of certiorari to review a final decision of the New Jersey Supreme Court should be granted under Supreme Court Rule 10(c); specifically: the state court has decided an important question of federal law that conflicts with the decision of the United States Supreme Court in Ex parte Slater, 246 U.S. 128 (1918) and Petitioner's due process rights under the Fourteenth Amendment.

In equity, the rule of abatement is that "the death of a party to a legal proceeding, where the cause of action survives, *suspends* the action as to decedent until someone is substituted for decedent as a party." 1 *C.J.S., Abatement and Revival*, Sec. 155 at 211 (1997). (Emphasis added). "[T]he action or suit cannot be prosecuted or proceeded with further, and nothing affecting decedent's estate can be done in the action or suit until it is revived by or against his representative or *successor in interest*." *Id.*, at 214. (Emphasis added). Furthermore, "[p]roceedings occurring in an action subsequent to the death of a party and before revival by his representative are null and void." *Id.*, at 215. *See: Reoux v. Reoux*, 218 N.Y.S.2d 754, 14 A.D.2d 648 (1961)(New York Supreme Court, Appellate Division, held that where defendant had died prior to service of a notice of motion for a new trial, the action was abated; further, that an order purporting to deny the motion, as well as a notice of appeal from the order denying the motion, was a nullity; however plaintiff

was not precluded from moving to have the executor substituted as defendant).

"The personal representative does not automatically succeed to decedent's rights and status as a litigant * * * whether plaintiff's personal representative or his heirs are to be substituted depends on whether the cause descended to the estate or the heirs." 1 *C.J.S. Abatement and Revival* § 158 at 217-218.

The United States Supreme Court in *Ex parte Slater*, 246 U.S. 128 (1918) decided a case which is identical to the factual situation in *Connor v. Flynn, infra*, as it pertains to the question of the procedures to be followed upon the death of a party having an interest in a court trust fund. In *Ex parte Slater, supra*, a contest developed when a Public Administrator moved for a mandamus against a judge of the Eastern District of Missouri to direct revivor, in petitioner's name, of a suit in equity. Opposing the public administrator was the decedent-party's widow, who had been appointed temporary administratrix in Texas and who, excepting the sum of $1.00 bequeathed to the son, was devised and bequeathed the entire estate of her deceased husband.

Ex parte Slater, supra, involved the sum of $95,777.00, which had been retained by the Missouri district court to await apportionment amongst five attorneys for services rendered in the suit. While proceedings concerning the liens were pending, one of the solicitors (Slater) died, thereby setting the stage for contest between the Missouri public administrator and the Texas widow-administratrix, which was decided in favor of the widow. After the will was probated, the widow then moved in the suit to be invested in "her *individual* capacity with the full right, title and interest of the deceased in the fund as of the date of [her husband's], death." *Id.*, at 131. (Emphasis added). The motion was granted. On appeal, the U.S. Supreme Court, in upholding

the widow's motion for revivor and substitution in her individual (versus representative) capacity, held:

> Of course, the death of one of the parties having an interest in the fund operated to *suspend the proceedings* until some one legally capable of asserting and defending that interest should either come or be brought into the suit in the place of the de- ceased * * * If the suit be one which may be revived, as where the cause of action * * * survives, *revivor is a matter of right*, and, if it be denied, the denial may be reviewed and corrected on appeal.

Id., at 133-134. (Emphasis added). *In this matter, petitioner seeks nothing less than the rights accorded to the applicant in Ex parte Slater: petitioner's substitution in Connor v. Flynn, Docket No. C-2565-68 as "individual" plaintiff based on petitioner's "right, title and interest" in the $6,408.80 proceeds of the judgment in the accounting suit, which abated upon his mother's death in 1977.*

Decisions of New Jersey courts are in accord with New Jersey Civil Practice Rule 4:34-1(b), which states: "[i]f a party dies and the claim is not thereby extinguished, the court *shall* on motion order substitution of the proper parties." And the substitution occurs *before* the hearing, not after, as attempted in *Flynn v. Connor.* In *Palko v. Palko*, 73 N.J. 395 (1977), the New Jersey Supreme Court, ruling in a matrimonial action, reversed and remanded for the trial court to determine, after a hearing, whether the plaintiff-wife's motion to reopen a divorce judgment's separation agreement was timely under *R.* 4:50-1(f). Because the defendant-husband had died prior to the commencement of the proceeding to reopen, the New Jersey Supreme Court ordered that "his estate through the executor of his last will and testament should be substituted as party defendant in

these proceedings." *Id.*, at 398. (The substitution in *Palko* was for the purpose of enabling the decedent's estate to defend against the former wife's claim of concealed assets at the hearing—*after* substitution).

In *Stroman v. Brown*, 194 N.J. Super. 307 (App. Div. 1984), the Appellate Division of the New Jersey Superior Court reversed and remanded a case wherein one defendant (wife Marguerite Brown) died *during* the pendency of an action to enforce a foreign (Pennsylvania) judgment and, because her death had not been brought to the court's attention, the case proceeded as though the defendant were still alive. In reversing the trial court's order enforcing the Pennsylvania judgment, the Appellate Division quoted Vice-Chancellor Bigelow's statement in *In re Admiral Sampson B. & L. Assn.*, 136 N.J. Eq. 292 (Ch. 1945) that: "[a]n earthly court has no jurisdiction over the dead." *Id.*, at 293. The appellate court then stated that the "[d]eath of a party *during pendency of an action* is governed by *R.* 4:34-1. . ." (emphasis added) and ruled
that:

> The claim against Marguerite based on the Pennsylvania judgment was not extinguished by her death, but that claim *cannot be heard* unless those having an interest in her estate or their representatives are *first* made parties pursuant to *R.* 4:34-1(b). *See Palko v.Palko*, 73 N.J. 395, 398 (1977).

Id., at 313. (Emphasis added). The *Stroman* decision is important, as well as controlling, for several reasons, first among them being its holding that *before* the claim could be heard, the successors-in-interest, or their representatives, had "first" to be made parties pursuant to *R.* 4:34-1(b). Secondly, in contrast to *Palko, supra*, which was a "closed" case at the time the motion to reopen was filed, the *Stroman* defendant died while the action was still pending — which is the identical

situation in *Connor v. Flynn*, C-2565-68, where the case was pending on appeal at the time of plaintiff Mary A. Connor's death. New Jersey courts have historically followed the rule that "whether plaintiff's personal representative or his heirs are to be substituted depends on whether the cause descended to the estate or the heirs." 1 C.J.S., *Abatement and Revival*, Sec. 155, at 217. *See: Peer v. Cookerow*, 14 N.J. Eq. 361, 366 (Ch. 1862) (executors held not necessary parties to suit); *Havens v. Seashore Land Co.*, 57 N.J. Eq. 142 (Ch. 1898) (Margaret A. Havens and others directed to be inserted in suit, as becoming parties in interest in the right of John C. Havens, deceased); *Russell v. Clark's Executors and Others*, 7 Cranch. 69, 3 L.Ed. 271 (1812) (U.S. Supreme Court set aside an equity decree of the Circuit Court for the District of Rhode Island and remanded for the addition of certain assignees which it deemed "essential parties, and the court ought not to decree in favor of the plaintiff without them").

It is established that, under the terms of her Last Will and Testament, deceased plaintiff Mary A. Connor, bequeathed her "individual" interests in this accounting suit to petitioner, and not to her estate. (Appendix G, p. 11a). As a matter of law, the *only* motion that petitioner could make, as a non-party, *is* a motion for substitution:

> No one but a party to a suit can make any motion in it *except* for the purpose of being made a party; and a petition filed by a stranger to a suit will be dismissed * * * The conduct of suits belongs to the parties to them, and only they have the right to apply for orders or directions.

Collins v. Kiederling, 87 N.J. Eq. 12, 14 (Ch. 1916). (Emphasis added). (Whether, once substituted as individual plaintiff, petitioner may be held to be bound by decisions in the suit rendered subsequent to Mary A. Connor's death, or whether, in

fact, those decisions are void under the law of equitable abatement, remain issues to be determined, following substitution).

* * * * * * * * *

A state violates due process of law when it fails to follow procedural steps it has adopted for proceedings held before it. *Whiteside v. Kay*, 446 F.Supp. 716 (D.C. La. 1978). "Rules of court, including rules requiring joinder of all necessary parties * * * are an essential consideration with respect to whether an affected party has had notice and an opportunity to be heard." *Kessler v. Tarrats,* 191 N.J. 273, *aff'd.* 194 N.J. Super. 136 (Ch. Div. 1983). It is well-established by the Supreme Court that the federal guarantee of due process extends to a state's judiciary, *Brinkerhoff-Faris Co. v. Hill,* 281 U.S. 673 (1930), and that the protection of the Fourteenth Amendment can be invoked "if a state deprives any person or denies enforcement of a right guaranteed." *Rice v. Sioux Memorial Park Cemetery, Inc.*, 349 U.S. 70 (1955).

* * * * * * *

Petitioner submits that the within matter is controlled by the Supreme Court's decision in *Ex parte Slater*, 246 U.S. 128 (1918), and that the New Jersey courts' denials of his motions for substitution (the refusal to vacate the denial of the first substitution motion under R. 4:50-1(f) and the refusal to grant the second, renewed motion) directly conflict with the *Slater* decision.

A brief examination of the record, *infra*, evidences a situation wherein the state courts refuse to even correctly treat and describe petitioner's motion, the Appellate Division describing

it as one wherein petitioner is moving to "be substituted in place of his deceased mother as plaintiff executrix" (Appendix B, p. 2a), while the trial court characterizes it as a motion "to be substituted as—for his mother as the executrix of the estate of Mary Ellen Flynn in the lawsuit against Edward J. Flynn." (Appendix N, p. 23a). (Decedent has sued in a dual capacity: as an "individual" in her own right and also as executrix of her mother's estate). The misapprehension is simply a dodge to avoid granting petitioner's application for "individual" substitution based on his ownership, by will, of the $6,408.80 proceeds from the accounting action in *Connor v. Flynn*, C-2565-68.

The purported substitution of the Administrator, C.T.A., for decedent, which only occurred *after* the second liens hearing had concluded, was not only too late to be legally valid, but also it occurred in the wrong case: *Flynn v. Connor*, C-3138-68, which had concluded 11 years previously. Any hearing on attorneys' liens need to have occurred in the accounting suit, Connor v. Flynn, C-2565-68, because: first, under New Jersey law, an attorneys' lien only "attaches to the judgment in the cause for which the services were rendered," *Brauer v. Hotel Associates, Inc.*, 40 N.J. 420 (1963), but also the terms of the Appellate Division's remand in *Connor v. Flynn*, A-898-75 mandated a plenary hearing on counsel fees in the accounting suit.(Appendix I, p. 14a). Consequently, by virtue of decedent's bequest of "right, title and interest" in C-2565-68, petitioner succeeded to Mary A. Connor's *right* to a plenary hearing on the attorneys' liens, *as a party and not merely as a beneficiary*.

That the New Jersey courts have no intention of recognizing petitioner's right of substitution under *R.* 4:34-1(b), and that its intent is to preserve, at all costs, the orders that disbursed some $50,000.00 from the trust fund, is amply evident from the exchange between court and petitioner on September 16, 1994, immediately following petitioner's reference to *Ex parte Slater*:

> "The court then inquired, hypothetically, what actions I would take if it were to grant my [first] motion for substitution, to which I replied that the question was 'premature.'
>
> "The court next inquired whether I would attack Judge Thompson's two orders (of disbursement), to which question I replied "Yes." The court then denied my first substitution motion.

(Appendix M, p. 21a). This colloquy between court and petitioner abundantly shows that the denial of petitioner's substitution motion(s) is predicated solely upon his intended actions as a substituted "individual" plaintiff in *Connor v. Flynn*, C-2565-68 and it *constitutes no legal cause to deny the substitution under R. 4:34-1(b) and Ex parte Slater, supra.*

Accordingly, since the New Jersey courts have denied petitioner's substitution applications which, if granted, would revive the cause of action, then "the denial may be reviewed and corrected on appeal." *Ex parte Slater, supra.* Accordingly, *Connor v. Flynn*, C-2565-68, remains a "suspended" case, on the basis of the doctrine of equitable abatement, *supra*, and is subject to revival upon petitioner's substitution for "individual" deceased plaintiff, Mary A. Connor.

CONCLUSION

For the reasons set forth above, the Court should grant this petition for *certiorari,* and in the event the New Jersey Supreme Court fails to amend its orders *nunc pro tunc*, as requested by petitioner, the Supreme Court should enter its order directing correction of the orders attached as Appendix A, D, O and P, *infra.*

Respectfully submitted,

/s/ JOHN R. CONNOR
John R. Connor, *Pro se*
Petitioner

Dated: 27 April, 1998

APPENDIX "A"
(Filed: October 7, 1997)

SUPREME COURT OF NEW JERSEY
C-234 September Term 1997
44,469

JOHN R. CONNOR,
Plaintiff-Petitioner,

v ON PETITION FOR CERTIFICATION

EDWARD J. FLYNN,
Defendant-Respondent.

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-962-95 having been submitted to the Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs.

[UNSIGNED]

WITNESS, the Honorable Alan B. Handler, Presiding Justice at Trenton, this 6th day of October, 1997.

/s/ Stephen W. Townsend
CLERK OF THE SUPREME COURT

APPENDIX "B"

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-0962-95T2
(Filed: May 9, 1997)

MARY A. CONNOR,
Individually and as Executrix of the
Estate of Mary Ellen Flynn,

Plaintiff,

v.

EDWARD J. FLYNN,

Defendant-Respondent.

Submitted April 28, 1997 - Decided May 9, 1997

Before Judges Landau and Kimmelman

On appeal from Superior Court of New Jersey,
Chancery Division, Essex County.

Appellant John R. Connor file a *pro se* brief.

Respondent did not file a brief.

PER CURIAM:

John R. Connor appeals *pro se* from an August 23, 1995 order denying his motion to be substituted in the place of his deceased mother as the plaintiff executrix in a Chancery Division matter, Docket C-2565-68, which was terminated and resolved many years ago. The order also denies his request to vacate a prior similar order under *R.* 4:50-1(f).

To the extent appellant's brief challenges the earlier rulings of this Court and of the Supreme Court respecting prior similar attempts to substitute into, and presumably to re-open, this long closed matter, we decline to reconsider our earlier opinions. As to the Supreme Court's earlier refusal to grant certification, it is not a matter which the Appellate Division may review.

To the extent appellant challenges the order of August 23, 1995, the arguments are clearly without merit. *R.* 2:11-3(e)(1)(E). We affirm substantially for the reasons set forth by Judge Weiss in his oral opinion on that date.

Affirmed.

APPENDIX "C"
(Filed: August 23, 1995)

John R. Connor, *Pro se*
380 Wyoming Avenue
Millburn, New Jersey 07041
(201) 762-5587

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: ESSEX COUNTY
DOCKET NO. C-2565-68

In the matter of:

MARY A. CONNOR, Individually and as Executrix of the Estate of Mary Ellen Flynn, Plaintiff,

vs.

EDWARD J. FLYNN, Defendant.

Civil Action

ORDER

The matter having been opened to the Court by Movant John R. Connor, *Pro se*, and the court having considered the moving papers and responses thereto, and good cause appearing,

It is on the 23rd day of August, 1995,

ORDERED and DIRECTED that:

1. The renewed motion of John R. Connor for substitution, in place of deceased individual plaintiff Mary A. Connor, in *Connor v. Flynn*, C-2565-68, is hereby denied.

2. The alternative motion of John R. Connor, under *R.* 4:50-1(f), for vacation of the Court's order denying substitution, dated September 16, 1994, is hereby denied; and,

It is further ORDERED and DIRECTED that:

A copy of this order shall be served on all persons noticed in Movant's application within 7 days of the date of this order.

/s/ Alvin Weiss
ALVIN WEISS, A.J.S.C.

APPENDIX "D"
(Filed: June 8, 1995)

SUPREME COURT OF NEW JERSEY
A-177 September Term 1994
#40,284

MARY A. CONNOR, ETC.,
Plaintiff-Appellant,

v.

EDWARD J. FLYNN,
Defendant-Respondent.

This matter having come before the Court on a claim of appeal as of right based on *Rule* 2:2-1(a)(1), and the Court having reviewed the submissions of the parties, and good cause appearing;

It is ORDERED that the appeal is dismissed for failure to state a substantial constitutional question. See *Tidewater Oil Co. V. Mayor and Council of Cartaret,* 44 *N.J.* 338, 341-342, (1965); *Piscataway Assoc., Inc. v. Township of Piscataway,* 73 *N.J.* 546, 549 (1977).

[UNSIGNED]

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 6th day of June, 1995.

/s/ Stephen W. Townsend
CLERK OF THE SUPREME COURT

APPENDIX "E"

ORDER ON MOTION
(Filed: February 16, 1995)

MARY A. CONNOR	SUPERIOR COURT OF NEW JERSEY
VS	APPELLATE DIVISION
EDWARD J. FLYNN	DOCKET NO. A-001161-94T2
	MOTION NO. M-002877-94
	BEFORE PART: B
	JUDGE(S): KING
	MUIR
	D'ANNUNZIO

MOTION FILED:	JANUARY 19, 1995	BY: EDWARD FLYNN
ANSWER(S) FILED:	FEBRUARY 1, 1995	BY: J0HN R. CONNOR

SUBMITTED TO COURT: FEBRUARY 08, 1995

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS 15th DAY OF February, 1995, HEREBY ORDERED AS FOLLOWS:

	GRANTED	DENIED	OTHER
MOTION BY RESPONDENT - TO DISMISS THE APPEAL - FOR COUNSEL FEES AND COSTS	(X)	(X)	(X)

SUPPLEMENTAL:

The motion to dismiss the appeal is granted; the motion for counsel fees and costs is denied.

FOR THE COURT:

/S/ MICHAEL PATRICK KING,
MICHAEL PATRICK KING, P.J.A.D.

APPENDIX "F"
(Filed: September 16, 1994)

John R. Connor, *Pro se*
380 Wyoming Avenue
Millburn, New Jersey 07041
(201) 762-5587

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: ESSEX COUNTY
DOCKET NOS. C-2565-68/C-3138-68

In the matters of :

MARY A. CONNOR, ET ALS.
Plaintiff,

vs. Civil Action

EDWARD J. FLYNN, ORDER
Defendant.

EDWARD FLYNN and BERNIC FLYNN,
Plaintiffs,

vs.

MARY CONNOR and THOMAS CONNOR,
Defendants.

The matter having been opened to the Court by Movant John R. Connor, *Pro se*, and the court having considered the moving papers, responses thereto, and oral argument advanced on the return day, and good cause appearing;

It is on this 16th day of September, 1994,

ORDERED and DIRECTED that:

1. [The motion of] John R. Connor [to be] substituted for, and in place of deceased individual plaintiff Mary A. Connor, in *Connor v. Flynn*, C-2565-68 [is:] DENIED;

It is further ORDERED and DIRECTED that:

A copy of this order shall be served on all persons noticed in movant's original application within 10 days of the date of this order.

/s/ ALVIN WEISS
J.S.C.

APPENDIX "G"

LAST WILL AND TESTAMENT OF MARY A. CONNOR (PARTIAL)

(Dated: April 13, 1977)
(Probated: December 3, 1979)

I, MARY AGNES CONNOR, of the Township of Millburn, County of Essex and State of New Jersey, being of sound and disposing mind, memory and understanding do hereby make, publish and declare this to be my Last Will and Testament hereby revoking and making void any other Wills and Codicils by me heretofore made.

FIRST: I direct that all my just debts and funeral and testamentary expenses be paid as soon as may be convenient after my decease.

SECOND: I give and bequeath any right, title and interest, including the proceeds, of the judgment in a pending lawsuit entitled Connor v. Flynn, Docket A-2853-74, in the Superior Court of New Jersey to my son, John Richard Connor, absolutely and forever.

****

LASTLY: I nominate, constitute and appoint my son, John Richard Connor, Executor of this my Last Will and Testament, to serve without bond * * *

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by seal this 13 day of April in the year of our Lord One Thousand Nine Hundred and Seventy-seven.

/S/ MARY AGNES CONNOR

APPENDIX "H"

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS
(No filing date on opinion)

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-2853-74

MARY A. CONNOR, Individually
and as Executrix of the Estate
of Mary Ellen Flynn,
Plaintiff-Appellant,

v.

EDWARD J. FLYNN,
Defendant-Respondent.

Submitted September 11, 1979 - - Decided Sep. 24, 1979

Before Judges Matthews, Ard and Polow

On appeal from the Superior Court, Chancery Division, Essex County

There was no appearance on behalf of Mary Connor, *pro se,* who is now deceased.

Mr. John Anthony Lombardi, attorney for respondent.

PER CURIAM.

The judgment of the chancery division is affirmed for the reasons expressed by the late Judge John A. Ackerman in his letter opinion dated November 20, 1974.

A TRUE COPY

Elizabeth McLaughlin,
Clerk.

APPENDIX "I"

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS
(No filing date on opinion)

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A 898-75

MARY A. CONNOR, Individually and
as Executrix of the Estate of
Mary Ellen Flynn,
Plaintiff-Appellant,

v.

EDWARD J. FLYNN,
Defendant.

Argued February 23, 1977; Decided May 11, 1977

Before Judges Lora, Crane and Michels.

On appeal from Superior Court, Chancery Division, Essex County.

Mr. John Connor argued the cause on behalf of appellant Mary A. Connor, *pro se.*

Mr. Fred Blackwell, respondent, appeared *pro se.*

Mr. Albert G. Besser argued the cause on behalf of respondent Messrs. Hannoch, Weisman, Stern & Besser, *pro se.*

Messrs. Milton, Keane & Brady, respondent *pro se* filed a statement in lieu of brief.

PER CURIAM (PARTIAL)

Plaintiff appeals from an order of the Chancery Division dated October 28, 1975, fixing the amount of attorneys' liens and directing the clerk of the court to pay the attorneys the amounts so fixed out of funds held by the clerk * * *

The attorney's lien claims were heard by the court below on October 20, 1975. Two previous hearing dates had been postponed because of reports to the court that Mrs. Connor was incapacitated by an automobile accident which occurred in June 1975 * * *

Plaintiff was entitled to a plenary hearing on the matter of counsel fees. *H. & H. Ranch Homes, Inc. V. Smith*, 54 *N.J. Super.* 347 (App. Div. 1959). She was entitled to appear and be heard with regard to the fair value of the attorneys' services. *Tuessel v. Cadillac Bar Corp.*, 63 *N.J. Super.* 430 (App. Div. 1960), certif. den. 34 *N.J.* 65 (1961). * * *

* * * We are pursuaded that to have denied plaintiff's request for an adjournment of the hearing under the circumstances here presented was a mistaken exercise of discretion which deprived plaintiff of her day in court. [Citations omitted] * * *

The judgment is reversed. The cause is remanded to the Chancery Division for a plenary hearing consistent with the views expressed in this opinion. Jurisdiction is not retained.

A TRUE COPY

Elizabeth McLaughlin,
Clerk.

APPENDIX "J"
(Not filed)
SUPERIOR COURT OF NEW JERSEY

Chambers of
Paul B. Thompson
Judge

Essex County Courts Blds.
Newark, N.J. 07102

June 13, 1983

John R. Connor, *Pro se*
380 Wyoming Avenue
Millburn, New Jersey 07041

Re: Connor v. Flynn
Dockets C-2565-68/3138-68

Dear Mr. Connor:

With reference to your motion to settle the record in the above matter, be advised that the administrator or executor is the proper party. Your motion, therefore, is denied.

Also, Mr. Lombardi's application for counsel fees is denied.

Very truly yours,

/s/ Paul B. Thompson
PAUL B. THOMPSON,
J.S.C.

PBT/Aj

cc: Fred P. Blackwell, Esq.
John H. Watson, Jr., Esq.
John Anthony Lombardi, Esq.
Michael B. Holt, Esq.
Ira M. Levee, Esq.
George Warren, Esq.
Arthur N. Furhman, Esq.

APPENDIX "K"
(Filed: May 30, 1985)

NOT FOR PUBLICATION
WITHOUT THE APPROVAL OF THE
COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3187-83T3

IN THE MATTER OF MARY A. CONNOR,
Individually, and as Executrix of
the Estate of Mary Ellen Flynn,
Plaintiff,

v.

EDWARD J. FLYNN,
Defendant.

EDWARD FLYNN and BERNICE FLYNN,
Plaintiffs,

v.

MARY CONNOR and THOMAS CONNOR,
Defendants.

Argued: March 25, 1985 - - Decided: May 30, 1985

Before Judges King and Deighan.

On appeal from the Superior Court, Chancery Division, Essex County.

John R. Connor argued the cause *pro se.*
(Mr. Connor and Thomas B. Connor, *pro se* on the brief).

Fred Blackwell argued the cause *pro se.*

Mark J. Keane appeared on behalf of Keane and Brady but did not argue the case.

PER CURIAM (PARTIAL)

* * * The executor had the duty to defend actions brought against the estate and those brought against decedent still pending at the time of death. 31 Am. Jr. 2d, *Executors and Administrators*, Section 180 at 102. Moreover, the next of kin of a decedent have no standing in a court of law or equity to maintain an action for recovery of property alleged to belong to the estate of the decedent. Such actions can be brought only by the duly appointed representative of the deceased. *Buchanan v. Buchanan,* 75 N.J. Eq. 274, 276 (E & A 1908). Lucas E. Phillips, as administrator c.t.a. of the Estate of Mary A. Connor, was the only proper party to the proceedings * * *

APPENDIX "L"
(Filed: October 20, 1997)

ORDER PREPARED AND
ENTERED BY THE COURT

.....

IN THE MATTER OF:	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION: ESSEX COUNTY
MARY A. CONNOR ET ALS,	DOCKET NO. C-2565-68
Plaintiff,	Civil Action
v.	ORDER
EDWARD J. FLYNN, Defendant.	

.....

The matter having been opened to the court by John R. Connor, Pro se, on motion to settle the record pursuant to a remand and there being no opposition and the Court having reviewed the Statement of Proceedings in Lieu of Transcript submitted by John R. Connor, Pro se and the Court having no recollection of what occurred during the time that the transcript of the September 16, 1994 proceedings is missing and having no objection to the Statement of Proceedings in Lieu of Transcript submitted by John R. Connor, Pro se and for good cause shown;

It is on this **20th** day of **October 1997,**

ORDERED that the Statement of Proceedings in Lieu of Transcript filed by John R. Connor, Pro se be accepted as the events which occurred on September 16, 1994 for which the electronic recording is missing.

/s/ Alvin Weiss
ALVIN WEISS, A.J.S.C.

APPENDIX "M"
(Filed: October 24, 1997)

John R. Connor, *Pro se*
380 Wyoming Avenue
Millburn, New Jersey 07041
(201) 762-5587

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: ESSEX COUNTY
DOCKET NO. C-2565-68

In the matter of:

MARY A. CONNOR, et als., :
Plaintiff,

vs.

EDWARD J. FLYNN,
Defendant. :

Civil Action
STATEMENT OF PROCEEDINGS IN LIEU OF TRANSCRIPT
(R. 2:5-3f)

---

1. Following my reference to the case of *Ex parte Slater* in court on September 16, 1994 (Transcript, pp. 5-6), my remarks on the record would have been read from Pt. II of my Notes which I prepared for that argument, a copy of which is attached. Next, I quoted from *Ex parte Slater*:

> "Of course, the death of one of the parties having an interest in the fund operated to suspend the proceedings until some one legally capable of

> asserting and defending that interest should either come or be brought into the suit in the place of the deceased * * * If the suit be one which may be revived, as where the cause of action * * * survives, revivor is a matter of right, and, if it be denied, the denial may be reviewed and corrected on appeal."
> *Ex parte Slater*, 246 U.S. 128, 133-134 (1918)

2. The court then inquired, hypothetically, what actions I would take if it were to grant my motion for substitution, to which I replied that the question was "premature."

3. The court next inquired whether I would attack Judge Thompson's two orders (of disbursement), to which question I replied "Yes." The court then denied my first substitution motion.

/s/ John R. Connor
John R. Connor

Dated: 17 October, 1997

CERTIFICATION

I hereby certify that the foregoing is true. I am aware that if any of the foregoing is wilfully false, then I am subject to punishment, as prescribed by law.

/s/ John R. Connor
John R. Connor

APPENDIX "N"

TRANSCRIPT OF DECISION
(PARTIAL)

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, EQUITY PART
ESSEX COUNTY, DOCKET C-2565-68

MARY A. CONNOR, etc.,
Plaintiff,

vs.

EDWARD J. FLYNN,
Defendant.

TRANSCRIPT
OF
DECISION

Place: Essex County Courthouse
Dr. Martin Luther King Blvd.
Newark, New Jersey 07102

Date: August 23, 1995

BEFORE:

HONORABLE ALVIN WEISS, J.S.C.

TRANSCRIPT ORDERED BY:

JOHN R. CONNOR, PRO SE,
380 Wyoming Avenue
Millburn, New Jersey 07041

THE COURT: This is Connor vs. Flynn, C-2565-68. This is amended, renewed notice of motion for substitution filed by John R. O'Connor, Pro se. The name of the case is in the matter

of Mary A. Connor, individually, and as executrix of the estate of Mary Ellen Flynn, plaintiff, vs. Edward J. Flynn. John R. O'Connor, Pro se, has filed this amended, renewed motion for substitution, to be substituted as—for his mother as the executrix of the estate of Mary Ellen Flynn in the lawsuit against Edward J. Flynn * * * Mr. O'Connor now has filed what he calls an amended, renewed notice of motion for substitution or, in the alternative, a relief from my order denying substitution under R4:50-F.

The Court will deny Mr. O'Connor's motion—amended, renewed motion. He having taken an appeal from my prior order, and that prior order having been—not being disturbed by the Appellate Division or the Supreme Court, that order still stands. As I indicated back in 1994, this matter has been concluded for a long, long time, and I didn't understand how the substitution he requested would in any way affect this case. The decisions in this case were entered back in the late 70's and early 80's, terminating the litigations. I therefore find there's no basis for me to grant any other relief requested and will enter an order denying Mr. Connor's motion.

(Proceedings Concluded)

APPENDIX "O"

SUPREME COURT OF NEW JERSEY
M-609 September Term 1997
44,469
(Filed: January 14, 1998)

JOHN R. CONNOR,

Plaintiff-Movant,

v.

ORDER

EDWARD J. FLYNN,

Defendant.

This matter having been duly presented to the Court, it is ORDERED that the motion for an extension of time within which to file a motion for reconsideration is granted.

[UNSIGNED]

WITNESS, the Honorable Deborah T. Poritz, Chief Justice, at Trenton, this 13th day of January, 1998.

/s/ Stephen W. Townsend
CLERK OF THE SUPREME COURT

I hereby certify that the foregoing
is a true copy of the original on file
in my office.
/s/ Stephen W. Townsend
CLERK OF THE SUPREME COURT
OF NEW JERSEY

APPENDIX "P"

SUPREME COURT OF NEW JERSEY
M-601 September Term 1997
C-746
44,469
(Filed: January 28, 1998)

JOHN R. CONNOR,

Plaintiff-Movant,

ORDER

v.

EDWARD J. FLYNN,

Defendant.

This matter having been duly presented to the Court, it is ORDERED that the motion for reconsideration is granted. The Court having reconsidered the matter in the light of the additional materials, the petition for certification (C-746) is denied.

[UNSIGNED]

WITNESS, the Honorable Deborah T. Poritz, Chief Justice, at Trenton, this 27th day of January, 1998.

/s/ Stephen W. Townsend
CLERK OF THE SUPREME COURT

I hereby certify that the foregoing
is a true copy of the original on file
in my office.
/s/ Stephen W. Townsend
CLERK OF THE SUPREME COURT
OF NEW JERSEY

APPENDIX "Q"

SUPREME COURT OF NEW JERSEY
(Filed: February 17, 1989)

JOHN R. CONNOR, ET ALS.,

Plaintiff-Petitioner,

vs.

R. G. SACHS, ET ALS.,

Defendants-Respondents.

Civil Action
On Petition for Certification
to the Superior Court,
Appellate Division

DOCKET NO. 29,896

ORDER EXTENDING TIME TO FILE BRIEF IN OPPOSITION TO PETITION FOR CERTIFICATION

(PARTIAL)

This matter having been opened to the Court by Shanley & Fisher, P.C., attorneys for defendants-respondents, R. G. Sachs, M.D., T.V. Inglesby, M.D., J.A. Belladonna, M.D., N.L.Murray, M.D., and C.J. Wittman, Jr., M.D., and with consent of plaintiff-petitioner John R.Connor, *pro se* * * *

IT IS ON THIS 28th day of February, 1989

ORDERED that an extension of time be granted to defendants-respondents, Sachs, Inglesby * * * within which to file their brief in opposition to petition for certification;

IT IS FURTHER ORDERED that the brief of defendants-respondents Sachs,Inglesby, Belladonna, Murray and Wittman be filed forthwith;

IT IS FURTHER ORDERED that a copy of the Order be served upon plaintiff-petitioner John R. Connor within seven days of the date hereof.

Robert N. Wilentz, C.J.
/s/ by Stephen W. Townsend

I hereby certify that the foregoing
is a true copy of the original on file
in my office.
/s/ Stephen W. Townsend
CLERK OF THE SUPREME COURT
OF NEW JERSEY